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INITIATIVE 762

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 762 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to restricting the civil forfeiture of property;
2 and adding a new section to Title 7 RCW.

3 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to Title 7 RCW to
5 read as follows:

6 (1) Except as set forth in this section, no judgment of forfeiture
7 of property in a civil forfeiture proceeding by the state or any of its
8 political subdivisions shall be allowed or entered until and unless the
9 owner of the property is convicted of a crime in the state of
10 Washington or another jurisdiction and the forfeiting agency shows by
11 clear and convincing evidence in a state superior court that the
12 property was instrumental in committing or facilitating the crime or is
13 proceeds of that crime.

14 (2) A judgment of forfeiture may be entered without a criminal
15 conviction for any contraband. For purposes of this section,
16 "contraband" means:

17 (a) Controlled substances as defined in chapter 69.50 RCW and
18 legend drugs held or used in violation of chapter 69.41 RCW;

1 (b) Cigarettes subject to tax under chapter 82.24 RCW and upon
2 which no tax stamp is affixed;

3 (c) Gambling devices manufactured, used, or possessed in violation
4 of chapter 9.46 RCW;

5 (d) Lewd matter as defined in chapter 7.48 RCW;

6 (e) Sexually explicit visual or printed materials involving a minor
7 child as defined in chapter 9.68A RCW;

8 (f) Wildlife taken in violation of Title 77 RCW;

9 (g) Intoxicating liquor manufactured, sold, bartered, exchanged,
10 given away, furnished, or otherwise disposed of or kept in violation of
11 Title 66 RCW; or

12 (h) Explosives, fireworks, improvised devices, and components of
13 explosives and improvised devices that are possessed, manufactured,
14 stored, sold, purchased, transported, abandoned, detonated, or used in
15 violation of chapters 70.74 and 70.77 RCW.

16 (3) Judgment of forfeiture may be entered without a criminal
17 conviction following reasonable notice to all persons known to have an
18 interest or who may have an interest in the property and no person
19 claims an interest in the property. In no event shall judgment of
20 forfeiture be entered less than 45 days after notice has been given.

21 (4) For purposes of this section, "property" means any interest in
22 any thing of value, including the whole or part of any lot or tract of
23 land and tangible and intangible personal property, currency,
24 instruments, or securities or any other kind of privilege, interest,
25 claim, or right whether due or to become due.

26 (5) The value of the property other than contraband forfeited under
27 this section shall not be excessive and shall be substantially
28 proportional to the specific conduct for which the owner of the
29 property has been convicted.

30 (6) In a forfeiture proceeding, if a person or financial
31 institution, other than the person who has been charged with or
32 convicted of a crime involving that property, claiming an interest in
33 the property, demonstrates that the person has an interest in the
34 property, that person's interest shall not be subject to forfeiture
35 unless:

36 (a) The forfeiting agency proves by clear and convincing evidence
37 that the person took the property or the interest with the intent to
38 defeat the forfeiture; or

(b) A conviction under subsection (1) of this section is obtained against the person.

(7) Except in the case of contraband and United States currency, any property forfeited and subject to this section shall be sold at public sale, and the owner shall be given reasonable notice of the sale. Contraband shall be destroyed or otherwise disposed as provided by law. Any property held pending forfeiture shall be held in a safe, secure and commercially reasonable manner. Any sale of forfeited property shall be conducted in a commercially reasonable manner. In no event shall any forfeited property or the proceeds of sale remain with or be distributed to the forfeiting agency. Property or proceeds forfeited under this section, including United States currency, shall be distributed or applied in the following order:

(a) To the satisfaction of any foreclosed liens, security interest, and contracts in the order of their priority;

(b) To the state or any of its political subdivisions for actual and reasonable expenses related to the costs of the forfeiture proceeding, including attorney fees, storage, maintenance, management, and disposition of the property incurred in connection with the sale of any forfeited property in an amount not to exceed twenty-five percent of the total proceeds in any single forfeiture;

(c) To the state or its political subdivisions pursuant to RCW 4.24.180.

(8) Neither the state of Washington, its political subdivisions, nor any forfeiting agency shall transfer forfeiture proceedings to the federal government unless a state superior court has affirmatively found that:

(a) The activity giving rise to the forfeiture is interstate in nature and sufficiently complex to justify the transfer; or

(b) The seized property may only be forfeited under federal law.

(9) The state of Washington or any of its political subdivisions shall take all necessary steps to obtain shared property or proceeds from the United States of America resulting from forfeiture under federal law. Any property or proceeds received from the United States of America or any of its political subdivisions shall be applied as provided in subsection (7) of this section.

(10) Any person acting under color of law, official title, or position who takes any action intending to conceal, transfer, withhold, retain, divert, or otherwise prevent any proceeds, conveyances, real

1 property, or any things of value forfeited under the law of this state
2 or the United States from being applied, deposited, or used in
3 accordance with this section shall be subject to a civil penalty in an
4 amount treble the value of the forfeited property concealed,
5 transferred, withheld, retained, or diverted. Nothing in this
6 subsection shall be construed to impair judicial immunity if otherwise
7 applicable. Nothing in this subsection shall be construed to limit
8 additional remedies available by law to the owner of the property.

9 (11) This section does not prohibit a person from voluntarily
10 giving a judgment of forfeiture. This section does not affect the
11 rights of real estate contract sellers as provided in chapter 61.30
12 RCW. This section does not affect the temporary seizure of property
13 for evidentiary or protective purposes as provided by law.

14 (12) Except to the extent that disclosure would violate an
15 individual's right to privacy or a vital government interest, no
16 forfeiture proceeding or disposition of proceeds shall be exempt from
17 the public records provisions of chapter 42.17 RCW.

18 (13) This section supercedes any current state or municipal law
19 inconsistent with this section.

20 SECTION 2 -- RCW 9.92.110 IS AMENDED as follows:

21 Every person sentenced to imprisonment in any penal institution
22 shall be under the protection of the law, and any unauthorized injury
23 to his person shall be punished in the same manner as if he were not so
24 convicted or sentenced. Except as provided in Section 1 of this Act,
25 A conviction of crime shall not work a forfeiture of any property, real
26 or personal, or of any right or interest therein. All forfeitures in
27 the nature of deodands, or in case of suicide or where a person flees
28 from justice, are abolished.

29 NEW SECTION. Sec. 3. This Act shall be known as the Forfeiture
30 Reform Act.

31 NEW SECTION. **Sec. 4** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 Repealer. RCW 69.50.505 is hereby repealed.
2 Repealer. RCW 82.24.130 is hereby repealed.
3 Repealer. RCW 82.24.135 is hereby repealed.
4 Repealer. RCW 82.24.140 is hereby repealed.
5 Repealer. RCW 82.23.145 is hereby repealed.
6 Repealer. RCW 9.46.231 is hereby repealed.
7 Repealer. RCW 7.48.090 is hereby repealed.
8 Repealer. RCW 9.68A.120 is hereby repealed.
9 Repealer. RCW 77.15.070 is hereby repealed.
10 Repealer. RCW 66.32.040 is hereby repealed.
11 Repealer. RCW 66.32.050 is hereby repealed.
12 Repealer. RCW 66.32.060 is hereby repealed.
13 Repealer. RCW 66.32.070 is hereby repealed.
14 Repealer. RCW 70.74.400 is hereby repealed.
15 Repealer. RCW 70.77.440 is hereby repealed.
16 Repealer. RCW 10.105.010 is hereby repealed.

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